

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 786 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA****HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT**Versus****HANSURAM RAMPATIRAM HARIJAN**

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Appearance :**MR KC SHAH APP for Appellant**

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA**and****HON'BLE SMT. JUSTICE ABHILASHA KUMARI****Date : 07/09/2007**

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 The above referred Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the Presiding Officer, Second Fast Track Court, District - Valsad, on 8th of August, 2005 in Sessions Case No. 10 of 2005 whereby present respondent, being accused of the Sessions Case, came to be acquitted by the Trial Court for the charges levelled against him under Sections 302 and 201 of the Indian Penal Code.

2 The facts of the prosecution case are complicated and could be ascertained from the Record and Proceedings called for from the Trial Court. The present accused is booked by police for causing murder of one Ashok Shayamlal Lalta. The facts in respect of murder of Ashok was revealed in other crime for which the present respondent was found responsible and accordingly it was alleged that the present respondent had

also caused murder of one Keshavkumar. According to prosecution case, deceased Ashok, deceased Keshavkumar and the accused Hansuram were serving in a factory situated at Vapi in Gujarat and they were staying at Daman in rented rooms owned by PW-7 Dyanand Baheru and he refers Keshavkumar as Doctor. According to PW-7 Dyanand, in one room, Doctor was staying and in other room four persons were staying. Thereafter, deceased Ashok and Keshavkumar had a quarrel and thereafter deceased Ashok and Hansuram started staying together. After two months, Ashok was missing and Keshav to whom he refers as a Doctor had been to his village. Accused Hansuram thereafter at the instance of PW-7 Dyanand Baheru, had vacated the said room. Hansuram i.e. present accused was staying with his wife, named as, Gayatriben and according to prosecution case, Keshav as well as Ashok, both deceased, had some illicit connection with the wife of the accused. This fact became the motive for death of Ashok and Keshavkumar.

3 The prosecution case is disclosed through

the discovery of dead body of Keshav on 5th of April, 2004. At that time, PSI Sebastiyen Devsiya was on duty at Daman Police Station and around 5th of April, 2004, person named Satishkumar Ramlal Jadav, approached him and conveyed that Keshavkumar was working with him, was taken away by some unknown persons from the factory and thereafter dead body of Keshavkumar was found on the road leading to Ganesh Industry and according to information someone had inflicted injuries on his body and Keshavkumar was done to death. PW-6 Sebastiyen Devsiya, therefore, registered a crime under Section 302 of the Indian Penal Code in respect of death of Keshavkumar Shaini and relatives of deceased were informed. Rameshkumar, brother of deceased Keshavkumar, reached at Daman and approached PW-6 Sebastiyen Devsiya, who was Investigating the death of Keshavkumar. It was learnt by PW-6 Sebastiyen Devsiya from Ramesh that the accused was close friend of deceased Keshavkumar, and even then, he did not attend funeral ceremony. PW-6 Sebastiyen Devsiya interrogated accused

in respect of death of Keshavkumar and it was found that accused had some injuries on his hand which he explained that while cutting vegetables, that wound was caused by a knife. During interrogation of the accused in respect of death of Keshav, it was revealed before PW-6 Sebastiyen Devsiya that before some time both the deceased Ashok and Keshav had committed rape with the wife of accused and, therefore, in the month of November, 2003, he had taken deceased Ashok in a bar and was offered drinks. When Ashok was heavily drunk, he was taken by the accused on a railway track with the help of other two friends. Deceased - Ashok was made to sit on railway track. They took tobacco and when one down train was passing on the track, Ashok was pushed by the accused on the railway track and, therefore, Ashok was cut in two pieces beneath the train.

4 For the death of Keshav, it appears that Daman Police Station had registered a crime and matter was investigated by PW-6 Sebastiyen

Devsiya and during this investigation it was revealed that deceased Ashok, whose death was subject matter of the present trial, was done to death by the accused. One unidentified dead body was found on Railway track in November, 2003 which was revealed to be the dead body of Ashok during investigation of the crime in regard to the murder of Keshav. In this respect, according to prosecution case, on 9th of November, 2003, PW-11 Devubhai Juliyabhai was on duty on Vapi Outpost of Valsad Railway Police Station. He received a memo on that day from Station Master, Vapi, that on railway track between Vapi and Karambeli at about 167 kms a dead body of unidentified person was lying. Devubhai Juliyabhai inquired into the matter and found that dead body and registered an Accidental Death Inquiry at Vapi Outpost vide Register No. 239 of 2003. Executive Magistrate from Umargam was called. Inquest was held and postmortem was conducted and it was found that the dead body was unclaimed. In the meantime, as aforesaid, in death of Kesav, Daman Police arrested the

present accused, who during interrogation informed in April 2004 that he had also caused death of Ashok on 9th of November, 2003 and, hence, a crime came to be registered against the accused for the death Ashok upon complaint given by Shayamlal Lalta, father of the deceased, on 15th of September, 2004, before Valsad Railway Police Station. Thus, it appears that the crime which was committed by the respondent of causing death of Ashok on 9th of November, 2003, came to be registered on 15th of September, 2004, vide Valsad Railway Police Station Crime Register No. I-150 of 2004 and after investigation, charge sheet was submitted against the accused for the death of Ashok.

5 Learned Trial Judge framed charges against the accused vide Exhibit - 6 on 31st of March, 2005 that on 9th of November, 2003, before 21.45 hours at any time, between Karambeli-Vapi Railway track, accused pushed Ashok on railway track when one down train was coming on that track because the accused had suspicion that

Ashok had raped his wife. The accused, therefore, was charged for the offences punishable under Sections 302 and 201 of the Indian Penal Code. Charge was read over to him and he pleaded not guilty. Prosecution examined as many as 12 witnesses and produced on record voluminous documentary evidence. When prosecution evidence was over, learned Trial Judge brought incriminating circumstances to the notice of the accused under Section 313 of the Code of Criminal Procedure wherein the accused denied in toto the case of the prosecution. Therefore, after hearing the prosecution and defence, the learned Trial Judge came to the above conclusion to acquit the accused and, hence, this appeal by the State.

6 Learned APP Mr. K.C. Shah for the State was heard in detail in respect of this Appeal.

7 We have called for the Record and Proceedings from the Trial Court and we are assisted by learned APP Mr. K.C. Shah by extra

copies of the evidence and necessary documents. We have carefully scrutinized the evidence recorded during the trial and the reasons assigned by the Trial Court for acquitting the accused. We have considered the vital features of the matter and reasonable probabilities arising out of the evidence recorded during trial even at this juncture also carefully.

8 It clearly appears that whole case rests upon the circumstantial evidence and confession made by the accused before Daman Police Officer Mr. Sebastiyana Devsiya. Except these circumstances it appears that, there is no evidence at all against the accused for causing murder of deceased Ashok.

9 As stated above, as per the prosecution case, the murder of Ashok was committed by the accused on 9th of November, 2003 with the intention that deceased Ashok would be crushed below one down train on railway track and on finding of the dead body, an accidental death

inquiry was recorded by Vapi Outpost Railway Station. The body was cut into two pieces and according to postmortem note placed on record at Exhibit-30, there was cutting of abdomen and body was separated in two pieces and there were crushing injuries on body. According to postmortem note, the death was due to shock and haemorrhage resulting from cutting at abdomen. At that time, the dead body was unidentified and was treated as such, but thereafter in April, 2004 another death i.e. when death of Keshav was reported to Daman Police and when accused was interrogated, he confessed before Daman Police that he had also caused death of Ashok on 9th of November, 2003.

10 Going through the evidence, it appears that PW-1, Exhibit-8 Munna Bhagvatiprasad Tiwari, is examined as panch of the panchnama at Exhibit-9, by which on 23rd of September, 2004, accused was arrested and a panchnama was drawn in respect of the body and the clothes of the accused. The witness has not supported the prosecution case. PW-2 Bipin Harilal Agrawal,

examined at Exhibit-10, is panch of panchnama drawn by the police on 23rd of September, 2004. According to the prosecution case, while accused was in custody, he willingly informed the panchas and police that he was prepared to take all of them to the scene of offence and accordingly he took police party and panchas to the scene of offence and again confessed his offence in second part of panchnama. However, this witness Bipin Harilal Agrawal did not support the prosecution case. Moreover, the panchnama as has been drawn by the police is not admissible in evidence under Section - 25 of the Indian Evidence Act as the statement of the accused recorded in panchnama amounts to confession of the accused in the presence of the Police Officer. Inquest Panchnama drawn by the police on 10th of November, 2003 in respect of unidentified dead body, which was thereafter revealed to be dead body of deceased Ashok is placed on record by the prosecution vide Exhibit - 12. Panchnama of scene of offence drawn by the police on 16th of September, 2004, in the

presence of two panchas, is placed on record at Exhibit-13. One more panchnama of scene of offence drawn by the Police on 16th of September, 2004 is also placed on record at Exhibit-14. PW-3 Satishkumar Shrinath, Exhibit-15, is the panch of panchnama Exhibit-16, by which it is the case of the prosecution that in the presence of complainant Shayamlal Lalta, father of the deceased, and in the presence of panchas, the articles recovered from the dead body of Ashok, were identified by the complainant to be the articles belonged to deceased Ashok, like belt, thread, clothes and one idol of goddess, etc. but PW-3 has not supported the prosecution case. PW-4 Satish Vargish, examined at Exhibit-17 is a witness, who knew accused and deceased Ashok both, and stated before the police that Ashok was in illicit relationship with wife of the accused. The witness had stated before Police that accused had not attended funeral ceremony of deceased Keshav and, therefore, on suspicion he was arrested by Daman Police where he confessed his crime. However, this witness has also not

supported the prosecution case and has been declared hostile. PW-5 Santosh Vargish, examined at Exhibit-18 has also not supported the prosecution case and according to the prosecution case, this witness produced one attendance card whereby on 9th of November, 2003, Hansuram was working in a factory where this witness was working. Except that, the accused was working in the factory on 9th of November, 2003, nothing beyond could be deposed by this witness before the court and, hence, the evidence of this witness is not helpful to the prosecution. PW-6 Sebastiyam Devsiya, examined at Exhibit- 20 was PSI at Daman Police Station, on 5th of April, 2004 and received information that a dead body with injuries was lying on road leading to Ganesh Industry. He recorded a crime in this respect and during investigation in respect of this dead body, which was turned out to be the dead body of deceased Keshav, present accused was called by Daman Police for interrogation for the death of Keshav around on 5th of April, 2004. During those interrogations in respect of death of Keshav,

the accused also confessed before this witness - a Police Officer that he had also committed murder of Ashok in April, 2003. Now, the evidence of this witness is not admissible at all which is clearly in breach of Section 25 of the Evidence Act wherein it is categorically provided for that a confession made before the police officer is not a relevant fact and cannot be proved. No reliance can be placed on this inadmissible evidence i.e. a confession of the accused before police officer. In cross-examination, this witness undoubtedly admitted that when Hansuram confessed the crime in respect of murder of Ashok, he was in police custody. PW-7 Dyanand Baheru, examined at Exhibit-21, was landlord of deceased Ashok and Keshav and the accused. He has deposed that Dr. Keshav, accused and Ashok were staying together and were friends. Thereafter, there was some dispute amongst them and Ashok vacated the room and was not thereafter staying in his premises. He was declared hostile and denied the fact that deceased Ashok had any illicit relation with

the wife of the accused. The evidence of this witness is not helpful to the prosecution case in any manner. PW-8 Brenden Azebedo, examined at Exhibit - 22, was Writer Police Constable of PW-6 Sebastiyam Devsiya, examined at Exhibit- 20 and PSI of Daman Police Station. According to witness Brenden Azebedo, they had received information about the dead body of Keshav lying at Kachigam. Thereafter, in interrogation, name of the accused was revealed and he was interrogated wherein he also confessed having committed murder of Ashok. The evidence of this witness also is inadmissible in evidence and not relevant as to the confession of the accused of a crime before police officer and his evidence is hit by Section 25 of the Indian Evidence Act. PW-9 Mohamed Yusuf Ibrahim Siliraz, examined at Exhibit-23, was a Police Constable at Kachigam of Daman. On 6th of April, 2004, first point of time, he was informed at about 7.45 that dead body of deceased Keshav was lying on the road leading to Ganesh Industry at Kachigam. Thereafter, he informed Daman Police Station and PSI Sebastiyam Devsiya,

examined as PW-6, as afore stated. In his evidence also, prosecution has attempted to prove on record confession of the accused in respect of the incident which the accused made to PW-6, PSI Sebastiyam Devsiya. This witness, as afore stated, is of no relevance so far as the fact in issue is concerned. PW-10 Shayamlal Lalta, examined at Exhibit-24, happened to be the father of deceased Ashok. According to him, six/seven months after the death of Ashok, Valsad Police had contacted him at his native place at District Banaras and he was shown the photograph of his deceased son which he had identified. According to him, as per his information, his son had committed rape upon the wife of the accused and, therefore, the accused had murdered him. He came to Gujarat and gave complaint before Police Station, which he produced at Exhibit-25. He identified the photograph of his son produced on record at Exhibit-26. He has been cross-examined in detail by the defence. This witness has no personal knowledge about the incident and that after seven months, i.e. on 9th of November,

2003 in pursuance of detection of murder of Keshav, this incident was revealed. FIR in this case came to be filed on 5th of September, 2004. The evidence of complainant is not at all helpful to the prosecution except that person who died on railway track was Ashok. Panchnama by which PW-10 Shymalal Lalta identified the articles found on the dead body of Ashok is placed at Exhibit-28. PW-11 Devubhai Juliyabhai, examined at Exhibit-32 is the First Investigating Officer in this case, and according to him, as stated above, in pursuance of Accidental Death Inquiry No. 239 of 2003, he investigated the death of one unidentified dead body lying on railway track between Vapi and Karambeli. At that juncture, he was Police Officer at Outpost of Valsad Railway Police Station. He had drawn the inquest panchnama on 9th of November, 2003 and sent unidentified dead body for postmortem. After seven months, according to this witness, the said unidentified dead body was revealed to be of deceased Ashok, son of PW-10 Shayamlal Lalta. PW-12 Jyaudin Jumamiya Chouhan, examined at

Exhibit-34, is second Investigating Officer, who took charge of the investigation after the crime was registered. According to him, in pursuance of AD Inquiry Case No. 239/2003, filed in Railways Police Station, Valsad, it was learnt that at Daman, accused during interrogation by Daman Police in some other crime confessed that he had caused murder of Ashok by pushing him on railway track underneath the train in April 2004 and, hence, a crime came to be registered against the accused being Crime Register No. 150 of 2004. He investigated the offence and filed the charge sheet.

11 From the above, it is clear that there is no iota of evidence against the accused to connect him with murder in respect of deceased Ashok. Whatever evidence is found on record, is evidence in the form of confession by accused before the Police Officer Sebastiyen Devsiya, which is not per se admissible in evidence. Except that, there is nothing incriminating against the accused in the evidence recorded

during the trial and for the above reasons, the learned Trial Judge acquitted the accused.

12 This being appeal against the acquittal, though we have re-appreciated the evidence as stated above, and we have come to our own conclusion that there was no evidence at all against the accused to connect with the crime, but scanning the reasons assigned by the Trial Court for the acquittal, it clearly transpires that there cannot be any other view in the present matter except the view taken by the Trial Court of acquitting the accused of the charges levelled against him as afore sated.

13 In this view of the matter, even at this juncture, after carefully examining the matter thoroughly, we are of the opinion that the judgment and order impugned in this Appeal warrants no interference and, hence, the following order :

“Leave to Appeal refused. Appeal stands dismissed.”

(J. R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

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